

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES  
Bert L. Cole  
Commissioner of Public Lands  
Olympia, Washington 98504

HARBOR AREA LEASE NO. 2332

BY THIS LEASE, by and between the STATE OF WASHINGTON, acting by and through the Department of Natural Resources, hereinafter called the Lessor and (b) (6), hereinafter called the Lessee, the Lessor leases to the Lessee on the terms and conditions as hereinafter set forth, the following described harbor area situate in Kitsap County, Washington, to wit:

That portion of the harbor area situate in front of Government Lot 7, Section 11, Township 24 North, Range 1 East, W.M., included in a tract described as follows:

Beginning at a point on the inner harbor line, said point also being the northwest corner of Lot 11, Supplemental Plat of Bay View Gardens, a recorded plat in said Government Lot 7 and running thence, along said inner harbor line, N 75° 43' 57.8" W 112 feet, thence N 63° 38' 00" W 148.126 feet, thence N 74° 55' 00" W, 193 feet, thence N 16° 00' 00" E across the harbor area 195 feet to a point on the outer harbor line, thence S 74° 00' 00" E along said outer harbor line 450 feet to a point which bears N 16° 00' 00" E from the point of beginning and then S 16° 00' 00" W, across the harbor area, to the point of beginning as shown on the official maps of Bremerton Tide Lands on file in the office of the Commissioner of Public Lands at Olympia, Washington.

#### SECTION 1 OCCUPANCY

1.1 Term. This lease shall commence on the 1st day of November, 19 74 and continue to the 1st day of November, 2004.

#### SECTION 2 USE OF PREMISES

2.1 Permitted Use. The Lessee shall have use of the leased premises for the purposes of building and maintaining wharves, docks and other structures for the convenience of navigation and commerce as shown on the exhibits approved by the Lessor and on file in the office of the Lessor.

#### SECTION 3 RENTAL

3.1 Amount. Annual rental in the amount of \$ 642.60, which represents 6 percent of the full and true value of the harbor area herein described as determined by the Lessor, in accordance with the provisions of Chapter 97, Laws of 1969, First Extraordinary Session.

3.2 Adjustment. The Lessor shall at the end of the first five (5) year period of the lease term and at the end of each subsequent five (5) year period of the lease term, determine the full and true value in money of the herein described harbor area exclusive of improvements, unless the improvements are State-owned, in which case they shall be included, which value shall be the value at which the property would be taken in payment of a just debt from a solvent debtor and such valuation shall be utilized in computation of rental for the five (5) year period following.

OLYMPIA COPY



3.3 Payment. The payment of the rental fixed to the Lessor each year in advance, is the essence of this lease, and the same shall be, and is a condition precedent to the execution and continuance of this lease or any rights thereunder. Payment is to be made to the Department of Natural Resources, Olympia, Washington 98504.

#### SECTION 4 RESERVATIONS

4.1 Regulations. The Lessor shall have the right to regulate, either under rules established by the Lessor or by legislative enactment, or by both methods; maintenance and design requirements of all improvements, the rates of wharfage, dockage and other tolls to be imposed by the Lessee upon commerce for any of the purposes for which leased harbor area may be used, and to change such regulations and rates from time to time, and the right to prevent by such means and in such manner as it may adopt; extortion, discrimination, unequal or exclusive privileges, and to cancel this lease for violation of any law, rule, regulation, or order governing the same.

4.2 Termination. The Lessor shall have the power to terminate this lease upon violation or default of any of the covenants and agreements, including the obligation to pay the specified rental contained herein, or for the failure or refusal to erect within a reasonable time hereafter, and continuously to operate and maintain in and upon the harbor area herein described; the wharves, docks, buildings or other structures represented in the exhibits of improvements proposed to be erected therein, which have heretofore been filed with the Lessor, or as altered with the consent and approval of said Lessor and entered upon its records.

4.3 Improvements. No improvement shall be placed upon the harbor area without the prior written authorization of the Lessor. Authorized improvements constructed or placed on the leased premises during the term of this lease by the Lessee, unless otherwise specified, are the property of the Lessee. Upon the termination or expiration of this lease, the Lessee agrees to sever, remove and dispose of those improvements designated by the lessor on the premises, within six months from date of termination or expiration. In those cases where the Lessor requires removal of improvements and such action is not taken by the Lessee, the Lessee agrees that the Lessor may remove such improvements and charge the Lessee for cost of removal and disposal. All improvements allowed to remain on the area herein described, upon termination or expiration of this lease, shall be the property of the Lessor.

4.4 Acquisition. The Lessor reserves unto itself, port district, county, city or other public agency in the territory where the portion of the harbor area described in this lease is located, the right to assume and thereafter hold this lease upon acquirement of the tidelands contiguous thereto and fronting thereon, without any value for said lease except for improvements thereon where such improvements are owned by the Lessee.

4.5 Entry. The Lessor shall have access to the premises at all reasonable times for the purpose of securing compliance with the terms and conditions of this lease.

4.6 Access. The Lessor reserves the right of access to and across the leasehold premises for all purposes and further reserves the right to grant easements and other land uses on the premises to others when the easement or other land uses applied for will not unduly interfere with the use to which the Lessee is putting the premises, or interfere unduly with the approved plan of development for the premises. No easement or other land uses shall be granted to third parties, until damages to the lease holder have been paid to the Lessee, or waiver signed by the Lessee.

4.7 Restrictions on Use. In connection with use of the premises, the Lessee shall:

(1) Conform to applicable laws and regulations of any public authority affecting the premises and the use thereof, and correct at the Lessee's own expense, any failure of compliance created through the Lessee's fault, or by reason of the Lessee's use.

(2) Remove no valuable material without prior written consent of the Lessor.

(3) Not make or suffer to be made, any filling in of the leased area or any deposit of rock, earth, ballast, refuse, garbage or other matter within such area except as approved in writing by the Lessor.



## SECTION 5 - REQUIREMENTS

5.1 Assignment and Sublease. This lease, or any portion thereof, may not be assigned, mortgaged, sublet or otherwise transferred without the prior written consent of the Lessor. In granting such consent, the Lessor reserves the right to change the terms and conditions of this lease as it may affect the assignee. Further, if the Lessee is a corporation or partnership and if at any time during the term of this lease, any part or all of the corporate shares or partnership interests of the Lessee shall be transferred by sale, assignment, bequest, inheritance, operation of law, or other dispositions so as to result in a change in the present control of the corporation or partnership by the person or persons now owning a majority of the shares, or change in the holding of the corporate or partnership interest, the same shall constitute an assignment of this lease and as such shall require prior written consent of the Lessor. Failure to obtain written approval of any assignment defined in this lease shall be grounds for cancellation.

5.2 Maintenance.

(1) The Lessee, at his sole cost and expense, shall at all times keep, or cause all improvements (regardless of ownership) to be kept, in as good condition and repair as originally constructed or as hereafter put, except for reasonable use.

(2) The Lessee shall not allow debris or refuse to accumulate on the leased premises, caused either by himself or any person authorized on the premises by the Lessee. Failure to comply with this provision shall be cause to permit the Lessor to remove the debris and refuse and collect the cost of such removal from the Lessee and/or cancel this lease.

5.3 Condition of Premises and Liability.

(1) The premises have been inspected by the Lessee and are accepted in their present condition. Lessee agrees to defend and hold Lessor harmless from any and all claims suffered, or alleged to be suffered on the premises, or arising out of operations on the premises.

(2) The Lessee shall carry with a responsible company or companies satisfactory to the State, a sufficient amount of fire and casualty insurance to recover the replacement cost of any or all improvements located on the leased premises. A copy of such insurance policy or policies is to be endorsed and delivered to the State with provision of ten (10) days' notice of change, expiration and/or cancellation to the State. In the event of fire or casualty damage to any improvement owned by the State, or required to be left on the leased premises at the expiration of this lease, the paid insurance benefits shall be used to immediately replace said improvements in a manner acceptable to the State or, if directed by the State, rehabilitate the area in a manner suitable to the State. Any portion of the insurance proceeds not so utilized shall be returned to the State or if so permitted, to be used to satisfy any outstanding obligations incurred by reason of this lease being utilized for loan security. In the event of fire or casualty damage to any improvement owned by the Lessee, the paid insurance benefits shall be used to either replace the proceeds, or in lieu thereof, rehabilitate the area in a manner suitable to the State. The Lessee shall guarantee that all sublessees shall have provisions to either replace their own damaged improvements or to rehabilitate the area as defined above.

5.4 Assessments. The Lessee shall pay all the annual payments on all assessments that may be legally charged, whether or not such assessments have been levied against the leasehold or the Lessor by the assessing agency.

5.5 Insolvency of Lessee. If the Lessee becomes insolvent, bankrupt, a receiver appointed, or his interest is transferred by operation of law, the Lessor may cancel this lease at its option. Insolvency as used herein, will mean the inability of the Lessee to meet obligations as they come due.

## SECTION 6 MISCELLANEOUS

6.1 No Partnership. The Lessor is not a partner nor a joint venturer with the Lessee in connection with the business carried on under this lease and shall have no obligation with respect to the Lessee's debts or other liabilities.

6.2 Non-Waiver. Waiver by either party of strict performance or any provisions of this lease shall not be a waiver of, nor prejudice the party's right to require strict performance of the same provision in the future, or of any other provision.



6.3 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees.

6.4 Succession. Subject to the limitations as stated in paragraph 5.1 on transfer of the Lessee's interest, this lease shall be binding upon, and inure to the benefit of the parties, their respective successors and assigns.

6.5 Notices. Any notice required or permitted under this lease shall be given when actually delivered or when deposited in the United States mail addressed as follows: To the Lessor: Department of Natural Resources, Public Lands-Social Security Building, Olympia, Washington 98504. To the Lessee: At the address given by the Lessee in the signature block, or as shown on later official documents of record with this lease.

6.6 Liens.

(1) No person shall have the right to file or place any lien of any kind or character upon the land or improvements within the leasehold premises without the prior written consent of the Lessor.

(2) In the event liens or other charges are placed on the leasehold premises, including land or improvements, arising out of the Lessee's actions directly or indirectly, the Lessee shall immediately cause such liens or charges to be discharged. The Lessor may forthwith cancel this lease if Lessee fails to discharge such liens or charges after ten days' notice to do so by the Lessor. The Lessee shall pay and indemnify the Lessor for all costs, damages or charges of whatsoever nature, including attorneys' fees necessary to discharge such liens or charges, whether such costs, damages or charges are incurred prior or subsequent to any cancellation of this lease.

6.7 Litigation. In the event this lease, its terms, its use, its occupation or it in any way becomes a matter of litigation, the Lessor shall be notified of such litigation within fifteen days after such litigation is begun. Failure to notify the Lessor of such action shall be cause for cancellation or termination of this lease.

6.8 Lessor's Right to Cure Defaults.

(1) If the Lessee fails to perform any requirement or obligations under this lease, the Lessor shall have the option to correct the obligation of the lease after thirty days' written notice to the Lessee. All of the Lessor's expenditures to correct the default shall be reimbursed by the Lessee on demand, with interest at the rate of one percent per month accrued from the date of expenditure by the Lessor.

(2) In the event any violation or breach of the provisions of this lease is causing damage to the leasehold premises or the Lessee is utilizing the leasehold premises in a manner not permitted by the provisions of this lease, or in any case damages are occurring to the leasehold premises, the Lessor may immediately enter upon the leasehold premises and take such action as necessary to cease such damages or use. In the event the damages or use is occurring by reason of a violation or breach of the provisions of this lease, the Lessee shall be liable for all costs incurred by the Lessor by reasons of such violations. The Lessor, at its option may send notice to the Lessee of such violations and the Lessee shall immediately cease such use or violation and correct and remedy such violations.

6.9 Bond. Lessee shall furnish a bond in the amount of \$ 1,000.00 as a guarantee of the performance of all the conditions set up and prescribed in this lease in all and every part thereof.



The Lessee expressly agrees to all covenants herein, and binds himself for the payment of the rental hereinbefore specified.

Executed this 29<sup>th</sup> day of April, 1975.

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES

By Bert L. Cole  
BERT L. COLE  
Commissioner of Public Lands

Signed this 28<sup>th</sup> day of April, 1975.

(b) (6)

(b) (6)

Dremerton, wa 98310  
Address

fs  
App. No. HA 2332

\*If Lessee is a corporation, complete Certificate of Acknowledgement on reverse side.

0-176-5  
9/30/73

R. C. English



CERTIFICATE OF  
CORPORATE ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, before me  
personally appeared \_\_\_\_\_  
\_\_\_\_\_ ,  
to me known to be the \_\_\_\_\_  
of the corporation that executed the within and foregoing instrument and acknow-  
ledged said instrument to be the free and voluntary act and deed of the corpora-  
tion, for the uses and purposes therein mentioned, and on oath stated that (he was)  
(they were) authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official  
seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
\_\_\_\_\_ residing at \_\_\_\_\_  
\_\_\_\_\_



HARBOR AREA LEASE BOND NO. \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss  
 County of \_\_\_\_\_ )

We, (b) (6)  
 of Bremerton, Wash, as principal, and we, Mike Johnson  
of Bremerton, Wash  
 as sureties, all of the State of Washington, County of Kitsap, do  
 confess ourselves indebted to the State of Washington in the penal sum of \_\_\_\_\_

\_\_\_\_\_ Dollars, and to  
 the payment of which we are held and firmly bound, and do by these presents bind  
 ourselves, our and each of our heirs, executors, administrators or assigns, jointly  
 and severally, firmly by these presents.

Sealed with our seals this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19 \_\_\_\_\_

The condition of the above obligation is such that, Whereas, the principal \_\_\_\_\_,  
 in the foregoing bond did enter into a certain lease and contract No. \_\_\_\_\_  
 with the State of Washington (which is hereto attached and made a part of this in-  
 strument), whereby the above bounden principal \_\_\_\_\_ ha \_\_\_\_\_ leased from the State of  
 Washington the part, lot or parcel of property described in said hereto attached  
 lease and contract, upon all the conditions set up in said lease and contract:  
 Now, therefore, if the said above named lessee \_\_\_\_\_, the principal \_\_\_\_\_ herein, shall  
 well and truly perform all the conditions set up and prescribed in the said lease  
 and contract hereto attached, in all and every part thereof, then this bond shall  
 be considered satisfied and discharged; otherwise it shall have full force and  
 effect.

Approved for general use:

Date December 4, 1973  
Heather Jone  
 Assistant Attorney General

Insurance Commissioner's Approval:

Signature: \_\_\_\_\_  
 Title \_\_\_\_\_

(b) (6)

Mailing Address \_\_\_\_\_

Mike Johnson  
 Surety

1109 Elizabeth Bremerton, Wa  
 Mailing Address

Signature: Attorney in fact \_\_\_\_\_

Signature: Resident Agent \_\_\_\_\_

Agency \_\_\_\_\_

Mailing Address \_\_\_\_\_

(Surety's Seal)



TO BE EXECUTED BY SURETIES ONLY

STATE OF WASHINGTON )

County of KITSAP ) ss

Mike E. Johnson

being first duly sworn, each for himself, and not one for the other, deposes and says: That he is a citizen of the State of Washington and is not barred by any statute of said State from executing bonds or becoming a surety; that he is one of the persons named in and who executed the foregoing obligation as surety, and that the same is his free and voluntary act and deed for the uses and purposes therein mentioned; that he is worth the sum of \$ 1000.00, over and above all his just debts and liabilities, in separate property situated in said State, and not exempt from sale on execution.

Mike E. Johnson

Subscribed and sworn to before me this 6<sup>th</sup> day of

MARCH, A.D., 1975.

Burkey B. Kenmore

Notary Public in and for the State of  
Washington, residing at BREMERTON